

**Introduced by Senator Anderson**

February 22, 2013

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An act to amend Section 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 641, as introduced, Anderson. Corporation taxes: minimum franchise tax: exemptions.

The Corporation Tax Law provides that all banks and corporations subject to tax and not otherwise exempt shall pay annually a minimum franchise tax of \$800, except as specified.

This bill would exempt from the minimum franchise tax a qualified new corporation, as defined, for its first 4 taxable years.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 23153 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 23153. (a) Every corporation described in subdivision (b) shall
- 4 be subject to the minimum franchise tax specified in subdivision
- 5 (d) from the earlier of the date of incorporation, qualification, or
- 6 commencing to do business within this state, until the effective
- 7 date of dissolution or withdrawal as provided in Section 23331 or,
- 8 if later, the date the corporation ceases to do business within the
- 9 limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive taxable years, commencing with the first taxable year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars (\$800).

(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in business other than mining.

(e) Notwithstanding subdivision (a), for taxable years beginning on or after January 1, 1999, and before January 1, 2000, every “qualified new corporation” shall pay annually to the state a minimum franchise tax of five hundred dollars (\$500) for the second taxable year. This subdivision shall apply to any corporation that is a qualified new corporation and is incorporated on or after January 1, 1999, and before January 1, 2000.

(1) The determination of the gross receipts of a corporation, for purposes of this subdivision, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the corporation is a member.

(2) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(3) “Qualified new corporation” means a corporation that is incorporated under the laws of this state or has qualified to transact intrastate business in this state, that begins business operations at or after the time of its incorporation and that reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state for the taxable year of one million dollars (\$1,000,000) or less. “Qualified new corporation” does not include any corporation that began business operations as a sole proprietorship, a partnership, or any other form of business entity prior to its incorporation. This subdivision shall not apply to any corporation that reorganizes solely for the purpose of reducing its minimum franchise tax.

(4) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as described in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.

(5) For any taxable year beginning on or after January 1, 1999, and before January 1, 2000, if a corporation has qualified to pay five hundred dollars (\$500) for the second taxable year under this subdivision, but in its second taxable year, the corporation's gross receipts, as determined under paragraphs (1) and (2), exceed one million dollars (\$1,000,000), an additional tax in the amount equal to three hundred dollars (\$300) for the second taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that year.

(f) (1) Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first taxable year.

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as described in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (b) of Section 1905 of the Corporations Code, prior to its amendment by the act amending this subdivision, and that does not thereafter do business shall not be subject to the minimum franchise tax for taxable years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

(i) (1) Notwithstanding subdivision (a), a corporation that is a small business solely owned by a deployed member of the United

1 States Armed Forces shall not be subject to the minimum franchise  
2 tax for any taxable year the owner is deployed and the corporation  
3 operates at a loss or ceases operation.

4 (2) The Franchise Tax Board may promulgate regulations as  
5 necessary or appropriate to carry out the purposes of this  
6 subdivision, including a definition for “ceases operation.”

7 (3) For the purposes of this subdivision, all of the following  
8 definitions apply:

9 (A) “Deployed” means being called to active duty or active  
10 service during a period when a Presidential Executive order  
11 specifies that the United States is engaged in combat or homeland  
12 defense. “Deployed” does not include either of the following:

13 (i) Temporary duty for the sole purpose of training or processing.  
14 (ii) A permanent change of station.

15 (B) “Operates at a loss” means negative net income as defined  
16 in Section 24341.

17 (C) “Small business” means a corporation with total income  
18 from all sources derived from, or attributable, to the state of two  
19 hundred fifty thousand dollars (\$250,000) or less.

20 (4) This subdivision shall become inoperative for taxable years  
21 beginning on or after January 1, 2018.

22 (j) *Notwithstanding subdivision (a), for taxable years beginning*  
23 *on or after January 1, 2013, a qualified new corporation shall not*  
24 *be subject to the minimum franchise tax for its first four taxable*  
25 *years.*

26 (C) *The determination of the gross receipts of a corporation,*  
27 *for purposes of this subdivision, shall be made by including the*  
28 *gross receipts of each member of the commonly controlled group,*  
29 *as defined in Section 25105, of which the corporation is a member.*

30 (B) *“Gross receipts, less returns and allowances reportable to*  
31 *this state,” means the sum of the gross receipts from the production*  
32 *of business income, as defined in subdivision (a) of Section 25120,*  
33 *and the gross receipts from the production of nonbusiness income,*  
34 *as defined in subdivision (d) of Section 25120.*

35 (2) (A) *“Qualified new corporation” means a corporation that*  
36 *is incorporated under the laws of this state or has qualified to*  
37 *transact intrastate business in this state, that begins business*  
38 *operations at or after the time of its incorporation and that*  
39 *reasonably estimates that it will have gross receipts, less returns*

1 *and allowances, reportable to this state for the taxable year of ten*  
2 *thousand dollars (\$10,000) or less.*

3 *(2) This subdivision shall not apply to any corporation that*  
4 *reorganizes solely for the purpose of reducing its minimum*  
5 *franchise tax.*

6 *(3) This subdivision shall not apply to limited partnerships, as*  
7 *defined in Section 17935, limited liability companies, as defined*  
8 *in Section 17941, limited liability partnerships, as described in*  
9 *Section 17948, charitable organizations, as described in Section*  
10 *23703, regulated investment companies, as defined in Section 851*  
11 *of the Internal Revenue Code, real estate investment trusts, as*  
12 *defined in Section 856 of the Internal Revenue Code, real estate*  
13 *mortgage investment conduits, as defined in Section 860D of the*  
14 *Internal Revenue Code, qualified Subchapter S subsidiaries, as*  
15 *defined in Section 1361(b)(3) of the Internal Revenue Code, or to*  
16 *the formation of any subsidiary corporation, to the extent*  
17 *applicable.*

18 SEC. 2. This act provides for a tax levy within the meaning of  
19 Article IV of the Constitution and shall go into immediate effect.